IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

MFA.No. 49 of 2002

OP MV.593/1994 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT: APPELLANT/PETITIONR IN O.P.(MV):

SHERIFF, S/O. MOIDEENKUTTY,
VILLAN HOUSE, NAYATTUKUNDUP.O.,
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS: RESPONDENTS/RESPONDENTS IN O.P.(MV):
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1. S.J. EDATTUKARAN, PROPRIETOR,
JAMESON PLASTICS, INDUSTRIAL ESTATE,
OLLUR P.O., THRISSUR DISTRICT.

*** 2. JOHNY, S/O. KOCHAPPAN,**
CHAKKALAKKAL HOUSE, POTHAKKARA DESOM,
PUTHUR VILLAGE. ***(DELETED)***

(THE NAME OF 2ND RESPONDENT IS DELETED FROM PARTY ARRAY AT THE RISK OF THE APPELLANT VIDE ORDER DATED 28/09/2007 ON IA NO. 2125/2007)

3. MANAGER, ORIENTAL INSURANCE COMPANY,
THRISSUR.

BY ADV. SRI.M.JACOB MURICKAN -- R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.49 OF 2002 ()

Dated this the 1st day of November, 2007

J U D G M E N T

KOSHY,J.

Appellant claimant met with an accident on 7.11.1993 at the age of 27. He claimed a compensation of Rs.3,00,000/- alleging that accident occurred due to the negligence of the driver of the vehicle insured by the 3rd respondent Insurance company. He was travelling as a pillion rider in a motor cycle. Tribunal has calculated a compensation of Rs.24,000/- and awarded Rs.12,000/- as lorry driver and motor cycle rider were equally responsible and no compensation is claimed from the motor cycle rider. Quantum of compensation and finding of contributory negligence are disputed herein.

2. After analysing the F.I.R., scene mahazar etc., tribunal found that accident occurred due to the negligence of the rider of the motor cycle as well as the lorry driver and negligence

was apportioned equally. On going through the evidence, we see no ground to disturb the finding of contributory negligence. Accident occurred in a straight road and there was a head-on-collision and finding of contributory negligence cannot be interfered with. Ext.A6 wound certificate shows the following injuries:

1. The patient was semi conscious.
2. Bleeding from the left ear.
3. Multiple abrasions over both foot, left knee joint and frontal area right side.
4. Fracture to the left tempera parietal.
5. Left tempera parietal contusion.
6. Subdural haematoma.
7. Diffuse Oedema."

Exts.A7 and A10 medical certificates were produced and treatment certificate also was produced which was issued by Dr.A.N.Subba Rao, Neuro Surgeon. Doctor also certified that as a result of the accident, he will have continuous giddiness, loss of memory due to brain damage and cerebral concussion. But

no disability certificate was produced. So compensation was not awarded for disability or loss of earning power. Tribunal found that four months he was under treatment taking Rs.1,000/- as the monthly income and thus Rs.4,000/- is awarded. He was 27 years at the time of accident. According to him, he was employed in Saudi Arabia and he was on leave. But no evidence was produced regarding his employment in Saudi Arabia. Since he was a non-earning person, notional income has to be fixed. Even the notional income of a non-earning person is Rs.1,250/- per month. He was an earning person. Hence we fix monthly income at Rs.1,500/-. If that be so, for four months he is entitled to Rs.6,000/-. Hence he is entitled to an additional amount of Rs.2,000/- on that count. For pain and sufferings only Rs.6,000/- was awarded. For discomforts, amenities and inconveniences only Rs.3,500/- was awarded. Medical certificate shows that he suffered subdural haematoma and diffuse oedema. He has bleeding on the left ear. Even though there is no evidence to show that there is permanent disability, considering these injuries, we are of the opinion that those will hamper his future work. In the above

circumstances, we are of the opinion that Rs.5,000/- more can be awarded for loss of amenities, discomforts and consequences to the injuries. Therefore additional amount payable is Rs.7,000/-. Out of this, only 50% can be attributed to the driver of the vehicle insured by the 3rd respondent Insurance company. Therefore, 3rd respondent is directed to deposit Rs.3,500/- with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal and on deposit of the amount, appellant is allowed to withdraw the amount. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.49 OF 2002 ()

J U D G M E N T

1st November, 2007